

(4) All requests for records and information made pursuant to the FOIA, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or HIPAA, 42 U.S.C. 1320d, will be processed in accordance with the procedures set forth in AR 25-55 and AR 340-21, respectively as well as 45 CFR Parts 160 and 164, DODD 6025.18-R, this part, and DA Pam 27-162.

(i) Any request for DOD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of AR 25-55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the Privacy Act when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the Privacy Act fee provisions. Withheld information must be exempt from disclosure under both Acts.

(ii) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the Privacy Act fee provisions. For further guidance, see AR 25-55, paragraphs 1-301 and 1-503.

(5) The following records may not be disclosed:

(i) Medical quality assurance records exempt from disclosure pursuant to 10 U.S.C. 1102(a).

(ii) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy), and law enforcement records (5 U.S.C. § 552(b)) unless requested by the subject of the record.

(iii) Records protected by the Privacy Act.

(iv) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 U.S.C. 552(b)), unless such records have been properly declassified.

(v) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) (5 U.S.C. 552(b)), unless the client consents to the disclosure.

(6) Records within a category for which withholding of the record is discretionary (AR 25-55, paragraph 3-101),

such as exemptions under the deliberative process or attorney work product privileges (exemption (5) (5 U.S.C. 552(b))) may be released when there is no foreseeable harm to government interests in the judgment of the releasing authority.

(7) When it is determined that exempt information should not be released, or a question as to its releaseability exists, forward the request and two copies of the responsive documents to the Commander USARCS. The Commander USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander USARCS will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the denial authority for Privacy Act requests (AR 340-21, paragraph 1-7i).

(c) *Claims assistance.* In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the COE repair teams. When the government of a foreign country in which U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished as much pertinent information and evidence as security considerations permit.

§ 536.17 Single-service claims responsibility (DODD 5515.8 and DODD 5515.9).

(a) *Assignment for DOD claims.* The army is responsible for processing DOD claims pursuant to DODD 5515.9 (posted on the USARCS Web site; for the address see § 536.2(a)).

(b) *Statutes and agreements.* DOD has assigned single-service responsibility for the settlement of certain claims in certain countries, pursuant to DODD 5515.8 (posted on the USARCS Web site; for the address see § 536.2(a)) under the following statutes and agreements:

- (1) FCA (10 U.S.C. 2734);
- (2) MCA (10 U.S.C. 2733);
- (3) Status of Forces Agreements (10 U.S.C. 2734a and 2734b);
- (4) NATO SOFA (4 U.S.T. 1792, Treaties and International Acts Series

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(T.I.A.S.) 2846) and other similar agreements;

(5) FCCA (31 U.S.C. 3711-3720E) and FMCRCRA (42 U.S.C. 2651-2653);

(6) Claims not cognizable under any other provision of law, 10 U.S.C. 2737; and

(7) Advance payments, 10 U.S.C. 2736.

(c) *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above has been assigned to military departments pursuant to DODD 5515.8, as supplemented by executive agreement and other competent directives.

(d) *When claims responsibility has not been assigned.* When necessary to implement contingency plans, the unified or specified commander with authority over the geographic area in question may, on an interim basis before receiving confirmation and approval from the General Counsel, DOD, assign single-service responsibility for processing claims in countries where such assignment has not already been made.

NOTE TO § 536.17: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.18 Cross-servicing of claims.

(a) *Where claims responsibility has not been assigned.* Claims cognizable under the FCA or the MCA that are generated by another military department within a foreign country for which single-service claims responsibility has not been assigned, may be settled by the Army upon request of the military department concerned. Conversely, Army claims may in appropriate cases be referred to another military department for settlement, DODD 5515.8, E1.2 (posted on the USARCS Web site; for the address see § 536.2(a)). Tables listing claims offices worldwide are posted to the USARCS Web site at that address. U.S. Air Force claims offices may be identified by visiting the Web site at http://afmove.hq.af.mil/page_afclaims.asp.

(b) *Claims generated by the Coast Guard.* Claims resulting from the activities of, or generated by, soldiers or civilian employees of the Coast Guard while it is operating as a service of the U.S. Department of Homeland Security may upon request be settled under this part by a foreign claims commission

appointed as authorized herein, but they will be paid from Coast Guard appropriations, 10 U.S.C. 2734.

(c) *SOFA claims within the United States.* Claims cognizable under the NATO PFP or Singaporean SOFAs arising out of the activities of aircraft within the United States may be investigated and adjudicated by the U.S. Air Force under a delegation from the Commander USARCS. Claims exceeding the delegated amount will be adjudicated by the USARCS.

(d) *Claims generated by the American Battle Monuments Commission.* Claims arising out of the activities of or in cemeteries outside the United States managed by the American Battle Monuments Commission (36 U.S.C. 2110) will be investigated and adjudicated by the U.S. Army.

NOTE TO § 536.18: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.19 Disaster claims planning.

All ACOs will prepare a disaster claims plan and furnish a copy to USARCS. See DA Pam 27-162, paragraph 1-21 for specific requirements related to disaster claims planning.

§ 536.20 Claims assistance visits.

Members of USARCS and command claims services will make claims assistance visits to field offices on a periodic basis. See DA Pam 27-162, paragraph 1-22 for specific requirements related to claims assistance visits.

§ 536.21 Annual claims award.

The Commander USARCS will make an annual claims award to outstanding field offices. See DA Pam 27-162, para 1-23 for more information on annual claims awards.

Subpart B—Investigation and Processing of Claims

§ 536.22 Claims investigative responsibility—General.

(a) *Scope.* This subpart addresses the investigation, processing, evaluation, and settlement of tort and tort-related claims for and against the United States. The provisions of this subpart do not apply to personnel claims (AR 27-20, chapter 11), or to claims under